

RCRA REVISION CHECKLIST 117 A

Reissuance of the "Mixture" and "Derived-From" Rules

57 FR 7628-7633

March 3, 1992

as amended on June 1, 1992 at 57 FR 23062-23063and on October 30, 1992 at 57 FR 49278-49279

(RCRA Cluster III, HSWA provisions)

Note: 1) This optional checklist has been developed for those States who feel it necessary to adopt the reissued "mixture" and "derived-from" rule promulgated on March 3, 1992 (57 FR 7628), and subsequently amended on June 1, 1992 (57 FR 23062), and on October 30, 1992 (57 FR 49278). This checklist consolidates these rules into one checklist except for a change made to 261.3(a)(2)(i) by the June 1, 1992 rule. That change is addressed by a separate checklist (Revision Checklist 117 B) because it corrects an omission made by the Toxicity Characteristic rule by replacing "Extraction Procedure Toxicity Characteristics" with "Toxicity Characteristic" in 261.3(a)(2)(i). This change makes the code more stringent and is, therefore, required.

2) The "mixture" and "derived-from" rules were reissued because the U.S. Court of Appeals for the District of Columbia Circuit in *Shell Oil Company v. EPA*, 950 F.2d 741 DC Cir. 1991, determined that adequate notice and comment had not been provided at initial promulgation of the "mixture" and "derived-from" rules, remanded them to the agency, and suggested EPA reinstate the rules on an interim basis and solicit comment. The March 3, 1992 interim final rule simultaneously removed and reissued 40 CFR 261.3. The October 30, 1992 (57 FR 49278) final rule removes the April 28, 1993 expiration date of the March 3, 1992 (57 FR 7628) interim final rule. EPA intends to promulgate revisions to the "mixture" and "derived-from" rules within 12-24 months of the October 30, 1992 final rule.

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE

PART 261 - IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

SUBPART A - GENERAL

† DEFINITION OF HAZARDOUS WASTE

a solid waste as defined in 261.2 is a hazardous waste if:	261.3(a)					
it is not excluded under 261.4(b)	261.3(a)(1)					
it meets any of the following criteria:	261.3(a)(2)					

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FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
it exhibits any of the 261 subpart C characteristics of hazardous waste with exceptions for specific mixtures; mixture is hazardous waste if it exceeds the maximum concentration for any 261.24 table 1 contaminant in specific circumstances	261.3(a)(2)(i)					
it is listed in 261 subpart D and has not been excluded from those listings by use of the procedures of 260.20 and 260.22	261.3(a)(2)(ii)					
it is a mixture of solid waste and a hazardous waste listed in 261 subpart D solely because it exhibits one or more 261 subpart C characteristics of hazardous waste; exceptions	261.3(a)(2)(iii)					
it is a mixture of solid waste and one or more hazardous wastes listed in 261 subpart D and has not been excluded from listings by use of the procedures of 260.20 and 260.22; mixture is not hazardous waste if the generator can demonstrate mixture is wastewater regulated under § 402 or § 307(b) of the Clean Water Act and:	261.3(a)(2)(iv)					

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solvent carbon tetrachloride, tetrachloroethylene, and/or trichloroethylene if maximum total weekly usage divided by average weekly flow into the headworks of the facility's treatment or pretreatment system is ≤ 1 ppm; or	261.3(a)(2)(iv)(A)					
one or more of specified spent solvents if maximum total weekly usage divided by average weekly flow into the headworks of the facility's treatment or pretreatment system is ≤ 25 ppm; or	261.3(a)(2)(iv)(B)					
heat exchanger bundle cleaning sludge from the petroleum refining industry (EPA Hazardous Waste No. K050); or	261.3(a)(2)(iv)(C)					
a discarded commercial chemical product or chemical intermediate listed in 261.33 arising from <i>de minimis</i> losses from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process; examples of <i>de minimis</i> losses; or	261.3(a)(2)(iv)(D)					

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wastewater resulting from laboratory operations containing 261 subpart D toxic wastes provided the annualized average flow of laboratory wastewater $\leq 1\%$ of total wastewater flow into the headworks of the facility's wastewater treatment or pretreatment system or the combined annualized average concentration is ≤ 1 ppm in the headworks of the facility's wastewater treatment or pretreatment facility; demonstrated laboratory toxic wastes not discharged to wastewater are not included in the calculation	261.3(a)(2)(iv)(E)					
a solid waste not excluded under 261.3(a)(1) becomes a hazardous waste when:	261.3(b)					
the waste first meets the 261 subpart D listing description	261.3(b)(1)					
a 261 subpart D hazardous waste is first added to a solid waste	261.3(b)(2)					
the waste exhibits any 261 subpart C characteristic	261.3(b)(3)					
unless and until it meets the criteria of 261.3(d):	261.3(c)					
hazardous waste remains hazardous waste	261.3(c)(1)					

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except as provided by 261.3(c)(2)(ii), any solid waste generated from the treatment, storage, or disposal of hazardous waste is a hazardous waste; exception for materials reclaimed from solid waste and used beneficially unless burned for energy recovery or used in a manner constituting disposal	261.3(c)(2)(i)					
the following solid wastes generated from the treatment, storage or disposal of a hazardous waste are not hazardous unless they exhibit one or more characteristics of a hazardous waste:	261.3(c)(2)(ii)					
waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry	261.3(c)(2)(ii)(A)					
1 waste from burning any of the materials exempted by § 261.6(a)(3)(v)-(viii)	261.3(c)(2)(ii)(B)					

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2 nonwastewater residues, such as slags, resulting from high temperature metals recovery processing of K061 waste; generic exclusion levels; testing requirement; notification and certification requirements for each shipment of certain K061 HTMR residues sent to a subtitle D unit	261.3(c)(2)(ii)(C)					
any solid waste described in 261.3(c) is not a hazardous waste if it meets the following criteria:	261.3(d)					
3 if a solid waste, it does not exhibit any of the 261 subpart C criteria; such wastes that exhibit a characteristic at the point of generation may still be subject to part 268	261.3(d)(1)					
if a waste listed in 261 subpart D, containing a 261 subpart D waste or derived from a 261 subpart D waste, it has also been excluded from 261.3(c) by use of the procedures of 260.20 and 260.22	261.3(d)(2)					

¹ As reissued by the March 3, 1992 rule, this subparagraph incorrectly referenced "261.6(a)(3)(v) through (ix)." The June 1, 1992 rule corrected this reference to read "261.6(a)(3)(v)-(viii)."

² Note that this section of code has been further revised by an August 18, 1992 rule (57 FR 37194; Revision Checklist 109). The changes addressed by this present checklist address only the "mixture" and "derived-

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from" rules as they were at the time of reissuance in March 1992. Unfortunately, the version of the "mixture" and "derived-from" rules, reissued by the March 3, 1992 rule, omitted 261.3(c)(2)(ii)(C) which had been added by an August 19, 1991 rule (56 FR 41164; Revision Checklist 95). The June 1, 1992 amendment to the reissued mixture and derived-from rule reinstated this omitted code.

- 3 The code reissued by the March 3, 1992 rule omitted the parenthetical sentence added by Revision Checklist 83 (56 FR 3864; January 31, 1991) addressing characteristic waste no longer exhibiting a characteristic that still may be subject to Part 268 requirements. The June 1, 1992 amendment re-added this sentence to the code.